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Supreme Court, U.S.
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No. 03-1721

IN THE

Supreme Court of the United States

LUCRETIA G. VINTILLA,

Petitioner,

v.

CITY OF ROCKY RIVER, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Supreme Court should accept for review the decisions of the District Court for the Northern District of Ohio, Eastern Division, and Sixth Circuit Court of Appeals which correctly applied the Federal Rules of Civil Procedure in converting a Motion to Dismiss a Complaint for Failure to State a Claim for Which Relief May Granted into a Motion for Summary Judgment Pursuant to Rule 12(b).

2. Whether the Supreme Court should accept for review the decisions of the District Court for the Northern District of Ohio, Eastern Division, and Sixth Circuit Court of Appeals which correctly determined that R. Bird, a police officer for the city of Rocky River, was entitled to qualified immunity, where the Petitioner failed to allege sufficient facts to show that the officer's conduct violated a clearly established constitutional right under the Due Process Clause of the Fifth and Fourteenth Amendments.

3. Whether the Supreme Court should accept for review the decisions of the District Court for the Northern District of Ohio, Eastern Division, and Sixth Circuit Court of Appeals which correctly held that an increase in insurance premiums does not constitute a deprivation of Petitioner's property without due process.

4. Whether the Supreme Court should accept for review the decisions of the District Court for the Northern District of Ohio, Eastern Division, and Sixth Circuit Court of Appeals which correctly held that Petitioner's

malicious prosecution claim failed because Officer Bird's conduct did not constitute "egregious, arbitrary abuse of government power that shocks the conscience."

5. Whether the Supreme Court should accept for review the decisions of the District Court for the Northern District of Ohio, Eastern Division, and Sixth Circuit Court of Appeals which correctly held that the city of Rocky River was entitled to summary judgment because there was no causal link between a municipal policy or custom and the alleged violation of Constitutional rights.

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OPINIONS BELOW

The order of the Court of Appeals for the Sixth Circuit is satisfactorily reprinted as Appendix B to the petition, as is the order of the Court of Appeals for the Sixth Circuit denying Petitioner's motion for rehearing, reprinted as Appendix A to the petition.

Because the order of the United States District Court, Northern District of Ohio, Eastern Division, granting Petitioner's Motion for Reconsideration and decision to leave the underlying summary judgment ruling undisturbed was not reprinted in Petitioner's appendix, it appears as Appendix A to this brief.

The order of the United States District Court, Northern District of Ohio, Eastern Division, is satisfactorily reprinted as Appendix C to the petition, as is the Judgment Entry of the District Court, reprinted as Appendix D to the petition.

STATEMENT OF THE FACTS

On December 10, 2000, Petitioner was involved in a motor vehicle accident with another vehicle after she made a right hand turn from the curb lane into the parking area of the Romanian Orthodox Church. Petitioner and the driver of the other vehicle exchanged insurance information and pulled their cars off to the side of the road into the parking lot. Thereafter, Officer Bird had occasion to arrive at the scene of the accident where he interviewed both parties and determined that Petitioner was at fault for the accident.

Instead of issuing a citation directly at the accident scene, Officer Bird went back to the station where he then, after

reviewing his notes, issued Petitioner a traffic citation. The citation was for a violation of Traffic Code 331.11(a) of the City of Rocky River which states:

> The driver of a vehicle intending to turn right into a private road or driveway, . . . from a public street or highway shall be governed by the following rule. (a) Approach for a right turn and a right turn shall be made as close as practicable to the right hand curb or edge of the roadway.

As a result of this accident, and based upon a "backing accident" on January 2, 2000, Petitioner's insurance company cancelled her policy. After she complained to the insurance company, the company reinstated her policy but at an increased rate.

Thereafter, Petitioner received a Summons in Lieu of Warrant commanding her to appear before the Rocky River Municipal Court on January 24, 2001. After entering a plea of not guilty, Petitioner's traffic case was scheduled for a trial on February 26, 2001.

On February 26, 2001, Officer Bird spoke with the victim of the accident and learned that all of the property damage had been properly and satisfactorily taken care of. As a result, Officer Bird agreed to have the case dismissed.

STATEMENT OF THE CASE

On November 21, 2002, Petitioner filed her Complaint against the City of Rocky River and Police Officer Richard Bird in the District Court for the Northern District of Ohio, Eastern Division. In the Complaint, Petitioner alleged that

Officer Bird's sworn criminal traffic complaint, which generated and formed the basis of the criminal proceedings against her, violated rights secured to her by the Fifth and Fourteenth Amendments to the United Stated Constitution and that the city of Rocky River was liable under a theory of respondeat superior.

On December 11, 2002, Petitioner filed a Motion for Summary Judgment. In support of her motion, Petitioner submitted the Complaint, the affidavits and exhibits annexed thereto, and a brief. On December 16, 2002, Respondents filed their responsive pleading in the form of a Federal Rule of Civil Procedure 12(b)(6) pre-answer Motion to Dismiss *and* Federal Rule of Civil Procedure 56 Brief in Opposition to Petitioner's Motion for Summary Judgment. Responses were subsequently filed and Judge Polster published his well-written and well-reasoned Memorandum of Opinion and Order on March 7, 2003. Petitioner filed a Motion for Reconsideration which Judge Polster summarily denied on March 21, 2003.

The crux of Judge Polster's decision was that the claims against Officer Bird failed because Petitioner could not establish the existence of a constitutional violation. Furthermore, Officer Bird's conduct was not a violation of due process because Petitioner could not show that the *government* deprived her of her property (i.e. increased her insurance premiums.) Finally, the district court rejected Petitioner's substantive due process allegations because a substantive due process violation requires "more intentionally reprehensible conduct than making a mistake."[1]

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1. The District Court also held that Petitioner's malicious prosecution claim failed because she did not allege a Fourth Amendment claim. However, the court acknowledged that even if she had, she could not establish such a claim.

With respect to the city of Rocky River, the District Court correctly held that no *Monell* violation could be found as no policy or custom was pled in Petitioner's Complaint. Further, the court noted that Petitioner had not established an underlying constitutional deprivation. Lastly, it is well-established constitutional precedent that respondeat superior claims are completely and utterly inappropriate for 42 U.S.C. § 1983 actions.

Petitioner then filed an appeal to the Sixth Circuit Court of Appeals. On March 3, 2004, the Sixth Circuit held that the district court properly granted summary judgment in favor of Officer Bird and the city of Rocky River. The court reasoned that Bird was entitled to qualified immunity because Petitioner failed to allege that Bird violated a clearly established constitutional right under the Due Process Clause of the Fifth and Fourteenth Amendments.

Further, the Sixth Circuit reasoned that the city of Rocky River cannot be held responsible for a constitutional deprivation unless there is a direct causal link between a municipal policy or custom and the alleged violation of constitutional rights. Petitioner neither alleged nor presented evidence that the city operated pursuant to an unconstitutional policy or custom requiring its police officers to violate the constitutional rights of its citizens. On April 15, 2004, the Sixth Circuit denied Petitioner's Petition for Rehearing.

REASONS FOR DENYING THE PETITION

A. The Judgment of the Sixth Circuit Does Not Invoke Any of the Grounds for Relief Recognized by Rule 10 of the Supreme Court Rules.

Rule 10 provides that "a petition of a writ of certiorari will be granted only for compelling reasons." This case presents no compelling reason. The Sixth Circuit's judgment does not conflict with any decision of another circuit on the same question. The Sixth Circuit did not decide an important federal question in a way that conflicts with the decision by a state court of last resort. It did not decide an important federal question in a way that conflicts with relevant decisions of this Court. Finally, the Sixth Circuit's judgment has not so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

In finding in favor of the Respondents, District Court for the Northern District of Ohio, Eastern Division, and the Sixth Circuit applied long-standing principles governing the Federal Rules of Civil Procedure, qualified immunity, constitutional interpretation, and liability pursuant to *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). Because the Sixth Circuit's opinion is consistent with the Federal Rules of Civil Procedure, the United States Constitution, and relevant case law, this Court should deny Petitioner's writ of certiorari.

B. The District Court and Sixth Circuit Correctly Applied the Federal Rules of Civil Procedure in Converting a Motion to Dismiss a Complaint for Failure to State a Claim for Which Relief May Be Granted into a Motion for Summary Judgment Pursuant to Rule 12(b).

Federal Rule of Civil Procedure 12(b) provides in pertinent part:

> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleadings to state a claim upon which relief can be granted, matters outside the pleading are presented and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

In the underlying case, Petitioner filed a Motion for Summary Judgment prior to the Respondents' Answer due date. In support of her motion, Petitioner submitted the Complaint, the affidavits and exhibits annexed thereto, and a brief. Specifically, Petitioner submitted twelve exhibits, including her own affidavit, the Rocky River Municipal Court Summons in Lieu of Warrant, a copy of the ticket issued to her by Officer Bird, the Rocky River Municipal Court's Journal Entry dismissing the case with costs to Petitioner, copies of correspondence prepared by her attorney, and documents evidencing the changes in her insurance premiums.

In response to Petitioner's Complaint and immediate Motion for Summary Judgment, Respondents filed a Motion to Dismiss pursuant to Fed. Civ. R. 12(b)(6) *and* Brief in Opposition to Petitioner's Motion for Summary Judgment pursuant to Fed. Civ. R. 56. Attached to that joint motion was an affidavit on behalf of Officer Bird. Petitioner subsequently filed an Answer Brief and a separate Supplemental Answer Brief prior to the court's ruling in favor of the Respondents.

On appeal, Petitioner claimed that the District Court failed to give her reasonable notice of the conversion of the Rule 12(b)(6) motion into one for summary judgment or an opportunity to respond to said motion. Petitioner's claim must fail for two reasons. First, Petitioner fails to acknowledge that Respondents' Motion to Dismiss was also a Brief in Opposition to her Motion for Summary Judgment. Thus, the officer's affidavit was attached to support both of Respondents' motions. Second, Petitioner had an opportunity to respond to Respondents' motions and took advantage of that opportunity by filing two answer briefs. This is contrary to Petitioner's claim that she did not respond to the alleged Motion for Summary Judgment because she had no knowledge that the court would treat the Motion to Dismiss as one for Summary Judgment.

The district court did not err in treating Respondents' Motion to Dismiss as one for Summary Judgment. It is appropriate to treat a motion to dismiss that goes beyond the pleadings as a motion for summary judgment. *See* Fed. Civ. R. 12(b); *Vakilian v. Shaw* 335 F.3d 509, 515 (6th Cir. 2003); *Salehpour v. University of Tennessee* 159 F.3d 199, 204 (6th Cir. 1998). In considering both parties' brief and exhibits, the court properly concluded that there was no genuine issue

of material fact and the Respondents were entitled to judgment as a matter of law. Petitioner fails to cite to any Sixth Circuit or United States Supreme Court case which requires the court to give a party verbal notice that a motion to dismiss will be treated as one for summary judgment.

Finally, Petitioner's argument is nonsensical in that she filed her own motion for summary judgment setting forth all materials in support of her claim that there is no genuine issue of material fact, but now argues that she was deprived of her due process rights to notice and an opportunity to defend with respect to the 12(b)(6) grant of summary judgment in favor of the Respondents because she was not put on notice that she had to come forward with all evidence. Not only did Petitioner present evidence outside of the pleadings to the Court by lieu of her own motion for summary judgment, she filed two briefs in response to Respondents' motions.

The District Court and Sixth Circuit correctly applied the Federal Rules of Civil Procedure in converting a motion to dismiss a complaint for failure to state a claim for which relief may be granted into a motion for summary judgment pursuant to Rule 12(b). Accordingly, Respondents request that this Court deny the Petition for a Writ of Certiorari.

C. The District Court and Sixth Circuit Correctly Found in Favor of the Respondent Officer Bird Due To The Lack Of The Existence Of A Constitutional Violation.

In order to prevail on a civil action under 42 U.S.C. § 1983, a plaintiff must plead and prove that the defendant, acting under a color of state law, deprived him of a right secured by the Constitution and the laws of the United States.

Paul v. Davis, 424 U.S. 693, 700 (1976). Generally, government officials performing discretionary functions have qualified immunity "shielding them from civil damages liability, as long as their actions could reasonably have been thought to be consistent with the rights they are alleged to have violated." *Anderson v. Creighton*, 483 U.S. 635, 638, 107 S. Ct. 3034 (1987).

It is the plaintiff's ultimate burden of proof to establish that the defendants are not entitled to qualified immunity. *Wegener v. City of Covington*, 933 F.2d 390, 392 (6th Cir. 1991). First, a plaintiff must show that a constitutional violation has occurred. If a court finds that no right was in fact violated, then the Court need not inquire further into whether the defendant satisfies the remaining elements of the qualified immunity doctrine. *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

Petitioner brought her § 1983 claims under the Fifth and Fourteenth Amendments and framed her argument in the following ways:

> The central issue in the case and the crux of the instant litigation is whether defendant Bird's sworn complaint, which generated and formed the basis of the criminal proceedings against the plaintiff in the Rocky River Municipal Court, violated the rights of the plaintiff as secured to her by the Constitution of the United States.
>
> The threshold question that must be answered is whether defendant Bird acted unlawfully in executing, in filing and in pursuing the complaint against the plaintiff in the Rocky River Municipal Court.

Therefore, the basis of Petitioner's Due Process and § 1983 claims against Officer Bird is based on the fact that Officer Bird filed and pursued the criminal traffic matter against her. Petitioner's claims that Officer Bird violated her constitutional rights by investigating an accident and coming to his professional and independent conclusion that she was at fault and then following up by signing an affidavit and criminal complaint for the traffic violation.

In dismissing these arguments, the District Court stated that it is clear from the pleadings and the uncontroverted documents that Petitioner cannot defeat Respondents' claim of qualified immunity because she has not established any constitutional violation. In citing to *Cleveland v. Nagy*, No. 56730, 1990 WL 43653, at *3, the court stated:

> Police officers who investigate accidents are called to the scene many times after the accident has occurred; seldom do they observe an accident in progress. After arriving at the scene of an accident, officers conduct an investigation by interviewing the parties and witnesses, if any, and gather physical evidence, if any, at the scene. Based upon their investigation, in many instances an officer will issue a citation on the spot.

As the District Court correctly noted, Officer Bird was called to the scene of the accident and after questioning the witnesses and making observations, he concluded that Petitioner was at fault and he subsequently issued her a citation. At no time has Petitioner articulated how Officer Bird conducted his investigation in an improper manner. The fact that Officer Bird investigated and disagreed with Petitioner's

up to the accident does not, without more, render his investigation, the issuance of a citation, and subsequent dismissal a violation of due process or any other Constitutional right.

The District Court and Sixth Circuit correctly found in favor of the Respondent Officer Bird due to the lack of the existence of a Constitutional violation. Accordingly, Respondents request that this Court deny the petition for a writ of certiorari.

B. The District Court and Sixth Circuit Correctly Found in Favor of the Respondents As to Petitioner's Claim for Deprivation of Property without Due Process.

Petitioner claims that Officer Bird is responsible for the increase in her insurance premiums. Petitioner premises this by arguing that her cancellation, and subsequent reinstatement at a higher rate constituted a deprivation of her property without due process. Such claims were properly dismissed by the District Court and affirmed on appeal to the Sixth Circuit.

The Due Process Clause of the Fifth Amendment guarantees that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." *United States v. James Daniel Good Real Property*, 510 U.S. 43, 48 (1993). Due process requires that individuals must receive notice and an opportunity to be heard before the government deprives them of property. *Id.* at 49. Petitioner cannot show

The District Court and Sixth Circuit correctly found in favor of the Respondents as to Petitioner's claim for deprivation of property without due process. Accordingly, Respondents request that this Court deny the petition for a writ of certiorari.

E. The District Court and Sixth Circuit Correctly Found in Favor of the Respondents As to Petitioner's Claim for Malicious Prosecution in Violation of her Substantive Due Process.

In *Frantz v. Village of Bradford*, 245 F.3d 869 (6th Cir. 2001), the Sixth Circuit held "[I]n cases of egregious behavior that do not include a seizure, a plaintiff may have a § 1983 malicious prosecution claim supported by substantive due process rights." *Id.*, at 877. In the present case, Petitioner has failed to articulate egregious behavior on the part of Officer Bird. Petitioner's argument that Officer Bird came to the wrong conclusion when deciding who caused the accident does not suffice.

However, even if there was a deprivation, Petitioner failed at all times to bring such a claim in the lower court. There is no mention of the Fourth Amendment in her Complaint. Both the district court and Sixth Circuit properly pointed out that Petitioner did not bring a § 1983 claim under the Fourth Amendment.

The District Court and Sixth Circuit correctly found in
ondents as to Petitioner's claim for
on in violation of her substantive due
, Respondents request that this Court
a writ of certiorari.

F. The District Court and Sixth Circuit Correctly Found in Favor of the Respondents As To Vintilla's § 1983 Claims Against The City of Rocky River.

A municipality cannot be held vicariously liable for the acts of its employees or agents on respondeat superior grounds. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978); *Owen v. City of Independence*, 445 U.S. 622 (1980). As the *Monell* Court explained:

> Instead, it is when execution of a government's policy or custom, whether made by its law makers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983. . . . *Id.*, at 691.

In *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986), the Supreme Court explained that the official policy requirements of § 1983 sought to distinguish acts of the municipality from acts of employees of the municipality. The liability of a municipality was seen as being limited to actions for which the municipality was actually responsible. In *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988), the Supreme Court held that a municipality cannot be held liable under § 1983 unless a claimant can prove that an unconstitutional municipal policy exists and that it has been furthered by actions of those who have final policy-making authority. *Id.*, at 128.

The only argument set forth by Petitioner is alleged wrongdoing on the part of Officer Bird. Because of the foregoing well established constitutional precedence, such a claim was properly dismissed by the District Court and affirmed on appeal by the Sixth Circuit.

Furthermore, a plaintiff cannot rest on mere conclusory allegations or mere conclusions. The allegation of a single incident of unconstitutional conduct by a municipal employee and a conclusory allegation of a policy or custom will never be sufficient. *Strauss v. City of Chicago*, 760 F.2d 765 (1985). More than one instance of conduct must be shown. *Id.*

Because Petitioner has failed to allege a policy or custom and cannot establish an underlying constitutional violation, Petitioner has failed to provide sufficient evidence to support her claim against the city. The District Court and Sixth Circuit correctly found in favor of the Respondents as to Petitioner's § 1983 claims against the City of Rocky River. Accordingly, Respondents request that this Court deny the petition for a writ of certiorari.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX — MEMORANDUM OF OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION FILED MARCH 21, 2003

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO. 1:02 CV 2291

JUDGE DAN AARON POLSTER

LUCRETIA G. VINTILLA,

Plaintiff,

vs.

CITY OF ROCKY RIVER, et al.,

Defendants.

MEMORANDUM OF OPINION AND ORDER

Before the Court is the Motion to Reconsider filed by Plaintiff Lucretia Vintilla on March 20, 2003 (ECF No. 12). By Motion, Plaintiff asks the Court to reconsider its ruling denying summary judgment to Plaintiff and granting summary judgment in favor of Defendants. *See ECF Nos. 10-11.* The Court **GRANTS** Plaintiff's request to reconsider its earlier ruling but, after reviewing Plaintiffs' arguments, shall leave the underlying summary judgment ruling **UNDISTURBED** for the following reason.

Appendix

Motions for reconsideration are "'extraordinary in nature and, because they run contrary to notions of finality and repose, should be discouraged.'" *Plaskon Electronic Materials, Inc. v. Allied-Signal, Inc.*, 904 F.Supp. 644, 669 (N.D. Ohio 1995) (quoting *In Re August, 1993 Regular Grand Jury*, 854 F.Supp. 1403, 1406 (S.D. Ind. 1994). "As such, motions for reconsideration are granted 'very sparingly.'" *Plaskon*, 904 F.Supp. at 669 (quoting *Bakari v. Beyer*, 870 F.Supp. 85, 88 (D.N.J. 1994)). Generally, the factors that justify reconsideration of a court's orders are: an intervening change in controlling law, the availability of new evidence, and the need to correct clear error or to prevent manifest injustice. *Plaskon*, 904 F.Supp. at 669 (quoting *Bermingham v. Sony Corp. of America, Inc.*, 820 F.Supp. 834, 856 (D.N.J.1992), *aff'd*, *37* F.3d 1485 (3rd Cir.1993). As District Judge Katz stated:

> Motions for reconsideration are not substitutes for appeal nor are they vehicles whereby a party may present arguments inexplicably omitted in prior proceedings. *Karr v. Castle*, 768 F.Supp. 1087, 1093 (D.Del. 1991), *aff'd sub nom.* 22 F.3d 303 (3rd Cir. 1994), *cert. denied sub nom.*, 513 U.S. 1084 (1995). "A party seeking reconsideration must show more than a disagreement with the Court's decision, and 'recapitulation of the cases and arguments considered by the court before rendering its original decision fails to carry the moving party's burden.'" *Database America, Inc., v. Bellsouth Advertising* car *Pub. Corp.*, 825

F.Supp. 1216, 1220 (D.N.J. 1993), citing G-69 *v. Degnan,* 748 F.Supp. 274, 275 (D.N.J. 1990).

Plaskon, 904 F.Supp. at 669.

Plaintiff s arguments are no more than a recapitulation of the cases and arguments considered by the court prior to rendering its original decision.[1] Because she has failed to show an intervening change in controlling law, the availability of new evidence, the need to correct a clear error or to prevent manifest justice, her motion fails. Accordingly, the underlying summary judgment shall remain undisturbed.

IT IS SO ORDERED.

s/ Dan Aaron Polster

Dan Aaron Polster
United States District Judge

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1. For example, Plaintiff once again argues that she never received a citation from Officer Bird. *See Motion, at 2.* However, the Complaint that she filed includes the citation. *See ECF No. 1,* at 3. Even if she had only received a summons and complaint, however, the Court's ruling would still stand for the reasons set forth in its Memorandum of Opinion and Order. *See ECF No. 10.*